

COMMONWEALTH OF MASSACHUSETTS
ENERGY FACILITIES SITING BOARD

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)	EFSB 02-RM-02
NOTICE OF RULEMAKING)	
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COMMENTS OF BAY STATE GAS COMPANY

I. INTRODUCTION

In accordance with the Energy Facilities Siting Board’s (“EFSB” or the “Board”) Final Order Opening Rulemaking, EFSB 02-RM-2, Bay State Gas Company (“Bay State”) hereby offers its comments concerning the Board’s proposed regulations “Rules for Petitions to Construct Natural Gas Pipeline Facilities,” 980 C.M.R. 15.00 et seq. Bay State applauds the Siting Board’s effort to clarify certain aspects of its jurisdiction and practice, which are not enumerated in the current regulations at 980 C.M.R. 7.00 et seq. Bay State’s comments below respond to the specific questions and issues raised by proposed 980 C.M.R. 15.00. Although Bay State has not addressed the specific process contemplated in the second portion of the EFSB’s proposed regulations – 980 C.M.R. 17.00 et seq., Bay State does wish to encourage the EFSB to ensure that its proposed rule will facilitate efficient and timely review of new facilities that are also subject to FERC review, which will benefit both market participants and consumers.

II. RESPONSE TO REQUEST FOR COMMENTS

A. Length, Pressure, and Time Interval Thresholds – 980 CMR 15.01(2)

Question 1: Is the regulation clear about the conditions under which a pipeline project is defined as jurisdictional to the Siting Board, or is there a class of projects for which jurisdiction would remain uncertain?

Response: Bay State appreciates the Board's efforts to clarify the circumstances under which certain types of construction may fall under its jurisdiction pursuant to G.L. c. 164, § 69G. Bay State believes the draft regulations provide additional guidance to those entities that are engaged in various construction projects as to when such projects require EFSB review. However, given the nature of the planning and construction process for LDCs such as Bay State, it may be appropriate to provide further consideration and guidance concerning the review process that would occur under certain circumstances. In particular, Bay State suggests that the EFSB consider providing additional flexibility in the review process.

?? Segmentation – 980 CMR 15.01(2)(a)

Bay State understands the EFSB's effort to ensure that projects that would otherwise be jurisdictional not be constructed by segment and avoid the Board's review. However, Bay State suggests that the EFSB must also consider circumstances where facilities may fall under the proposed definition of segmentation, but are appropriately constructed separately and may be appropriate to exclude entirely from EFSB review or be subject to a review process that is more limited in scope. For example, an LDC may construct a segment of pipeline that extended 5,000 feet in year one with no expectation that further construction would occur adjacent to that segment. If a new large user sought to join the Company's system four years later and would require an extension beyond the initial 5,000 feet of a further 500 feet to the same segment, this scenario would trigger EFSB jurisdiction under the proposed regulations. As in this example, where the two segments are truly independent and the latter segment is not anticipated at the time

of initial construction, a case can be made that the EFSB should decline to conduct a full scale review of the project. Thus there may be circumstances where it may not be appropriate for the EFSB to assert jurisdiction on the basis of segmentation. Further, as a practical matter, under the segmentation scenario, where some portion of construction occurs prior to EFSB jurisdiction attaching, the review process will be complicated and may require additional flexibility.

?? Replacement Pipe – 980 CMR 15.01(2)(b)

Bay State recognizes that the Board's proposed definition of replacement pipe also is intended to clarify the circumstances under which it would not consider specific activities to require its review. Bay State suggests, however, that situations also may arise where additional flexibility with respect to review of replacement pipe also may be warranted. For example, if a segment of pipe is replaced within the same right-of-way and of the same nominal diameter, but a different operating pressure, under the proposed regulations, it would appear that this replacement would require a full scale petition for EFSB approval. Bay State suggests that the EFSB consider adding additional language to this definition that would provide guidance concerning the circumstances under which waiver of EFSB review may be appropriate, or a more limited scope of review. In an instance where the only difference between the original and replacement pipe is a change in operating pressure, Bay State suggests that the EFSB exempt this situation from its review process, given the extremely limited nature of the change between the original and replacement facilities.

Question 2: Does a five-year time-span provide a reasonable basis to encompass contiguous construction activities?

Response: As discussed above, in practice, a five-year period would be longer than an LDC's planning horizon. Thus, Bay State suggests it would be appropriate to (1) consider a shorter

timeframe for segmentation, or (2) provide additional guidance that there may be circumstances where it would be appropriate to exempt construction from EFSB review within a five-year period. Specifically, if (1) there is no need for the second “segment” at the time the first segment is constructed, and (2) the second segment’s construction could not have been reasonably anticipated at the time the first segment was constructed, it would be appropriate to consider whether in fact, the two segments should be considered for purposes of EFSB review. Bay State fully understands that the EFSB seeks to ensure that jurisdictional facilities are subjected to an appropriate review process and agrees with this objective. Absent some additional flexibility in application of the segmentation rule, it is possible that the regulatory review process could serve to discourage otherwise economic investments by LDCs or pose unacceptable delays to prospective customers. Bay State believes that flexibility in application is particularly appropriate in this instance, since the proposed five-year construction period does not derive directly from the EFSB’s statute, but rather is judgment-based.

Bay State appreciates that it is difficult to anticipate how such determinations would be made, since they are likely to involve fact-specific questions. However, Bay State suggests that it would be appropriate for the EFSB to acknowledge the possibility that there would be circumstances where pipeline segmentation should be deemed not to require full EFSB review and application of Section 15 would be waived. Further, there may be circumstances of segmentation where some EFSB review is appropriate, but would either be limited in scope or require additional guidance for the petitioner. For example, the regulations do not indicate how the EFSB would review the previously constructed portion of the segmented pipeline. Under such circumstances, it also would be appropriate for the EFSB to give some consideration to an expedited review process, where appropriate.

Question 3: Is there a way to define “normal operating pressure” that can be objectively, accurately, and assuredly determined prior to facility construction?

Response: Bay State does not propose to modify to the EFSB’s suggested definition of normal operating pressure. It should be noted however, that the new definition could provide an incentive to LDCs to rate new facilities at a lower level, to avoid the possibility that EFSB jurisdiction would be triggered. Bay State believes that the proper incentive to the entities constructing the facilities should be economic efficiency.

B. Contents of Petition – 980 CMR § 15.03(1)

Bay State believes that the EFSB’s additional guidance concerning the content for petitions to construct gas pipeline facilities is appropriate and consistent with its scope of review of new facilities. As discussed above, Bay State does suggest that it may be appropriate for the EFSB to provide additional guidance as to circumstances under which a more limited petition may be appropriate. For example, in a circumstance where an existing segment of pipeline in excess of one-mile were replaced in a manner that triggered jurisdiction under the regulations, it still may be appropriate to exclude certain aspects of the facility, for example those characteristics that would not change with the replacement, from EFSB review. Bay State recognizes that such atypical circumstances are not easily predicted and may be best suited to a determination concerning scope of review on a case by case basis. However, Bay State believes that it would be beneficial to LDCs to have some general guidance from the Board that it would consider an abbreviated review process for certain types of circumstances, so that LDCs would be able to take this into consideration in advance of deciding to move forward with a project.

III. CONCLUSION

Bay State appreciates the opportunity to offer its views concerning the EFSB's proposed regulations and is prepared to provide additional information to the EFSB should the Staff wish to consider possible changes to aspects of the proposed rules.

Respectfully submitted,

BAY STATE GAS COMPANY

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